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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/461,402	06/05/1995	ANDREW H. CRAGG	94-P0273US02	6448

54953	7590	01/31/2012
BROOKS, CAMERON & HUEBSCH, PLLC		
1221 NICOLLET AVENUE		
SUITE 500		
MINNEAPOLIS, MN 55403		

EXAMINER	
SONNETT, KATHLEEN C	

ART UNIT	PAPER NUMBER
3731	

MAIL DATE	DELIVERY MODE
01/31/2012	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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1221 NICOLLET AVENUE  
SUITE 500  
MINNEAPOLIS MN 55403

*In re* Application of

Cragg et al.

Application No. 08/461,402

Filed: June 5, 1995

:  
:  
: DECISION REGARDING  
: OFFICE ACTIONS  
:

This application is before the Group Director of Technology Center 3700 for review of the Request for Continued Examination (RCE) filed on August 21, 2009 and the office actions mailed on January 19, 2010, July 8, 2010, December 6, 2010, May 24, 2011, and September 7, 2011.

REVIEW OF FACTS

1. Application 08/461,402 was filed on June 5, 1995.
2. Prosecution progressed to a Quayle office action being mailed on July 2, 2009.
3. On August 21, 2009, a response, including a RCE, was filed to the July 2, 2009 office action.
4. On January 19, 2010, a non-final office action was mailed addressing the August 21, 2009 response.
5. On April 5, 2010, a response was filed to the January 19, 2010 office action.
6. On July 8, 2010, a final office action was mailed addressing the April 5, 2010 response.
7. On September 20, 2010, a response, including a RCE, was filed to the July 8, 2010 office action.
8. On December 6, 2010, a non-final office action was mailed addressing the September 20, 2010 response.
9. On March 7, 2011, a response was filed to the December 6, 2010 office action.
10. On May 24, 2011, a final office action was mailed addressing the March 7, 2011 response.
11. On June 30, 2011, a response, including a RCE, was filed to the May 24, 2011 office action.
12. On September 7, 2011, a non-final office action was mailed addressing the June 30, 2011 response.
13. On November 30, 2011, a response was filed to the September 7, 2011 office action.

REGULATION AND PRACTICE

**37 CFR 1.114. Request for continued examination.**

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

- (1) Payment of the issue fee, unless a petition under § 1.313 is granted;
- (2) Abandonment of the application; or
- (3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Art Unit: 3731

(c) A submission as used in this section includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. If reply to an Office action under 35 U.S.C. 132 is outstanding, the submission must meet the reply requirements of § 1.111.

(d) If an applicant timely files a submission and fee set forth in § 1.17(e), the Office will withdraw the finality of any Office action and the submission will be entered and considered. If an applicant files a request for continued examination under this section after appeal, but prior to a decision on the appeal, it will be treated as a request to withdraw the appeal and to reopen prosecution of the application before the examiner. An appeal brief (§ 41.37 of this title) or a reply brief (§ 41.41 of this title), or related papers, will not be considered a submission under this section.

(e) The provisions of this section do not apply to:

- (1) A provisional application;
- (2) An application for a utility or plant patent filed under 35 U.S.C. 111(a) before June 8, 1995;
- (3) An international application filed under 35 U.S.C. 363 before June 8, 1995;
- (4) An application for a design patent; or
- (5) A patent under reexamination.

### ***MPEP 706.07(h) III (A) - Treatment of Improper RCE***

If one or more conditions for filing an RCE have **not** been satisfied, applicant will be so notified. Generally, a "Notice of Improper Request for Continued Examination (RCE)," Form PTO-2051, will be mailed to applicant. An improper RCE will **not** operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application.

If an examiner discovers that an improper RCE has been forwarded to the examiner in error, the application should be immediately returned to a head supervisory legal instruments examiner (HSLIE) within the TC.

## **DECISION**

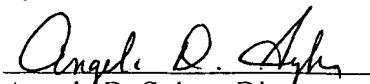
A review of the application file reveals that the RCE filed on August 21, 2009 is improper since a RCE can not be filed in an application filed before June 8, 1995. See 37 CFR 1.114. As noted in MPEP 706.07(h) III (A), an improper RCE will not operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application. Since the August 21, 2009 response is improper and no proper action was taken to stop the running of the time period set in the July 2, 2009 Office action, the Office actions of January 19, 2010, July 8, 2010, December 6, 2010, May 24, 2011, and September 7, 2011 should not have been mailed and are hereby vacated. As such, the responses by applicant filed after August 21, 2009 are not timely.

## **CONCLUSION**

Accordingly, the August 21, 2009 response is improper and is not entered and the January 19, 2010, July 8, 2010, December 6, 2010, May 24, 2011, and September 7, 2011 office actions are vacated.

The application is being forwarded to the examiner for appropriate action.

Any inquiry regarding this decision should be directed to Linda Sholl, Quality Assurance Specialist, at 571-272-4391.



Angela D. Sykes, Director  
Technology Center 3700